

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,887
)	
Appeal of)	
)	

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare terminating his Vermont Health Access Program eligibility. The issue is whether the petitioner and his wife are financially eligible for the program.

FINDING OF FACT

1. In August of 1998, the petitioner and his wife, who had only very limited insurance coverage (accidental only), applied for coverage under the Vermont Health Access Program. The application filed by the petitioner showed that he had earnings from July in his employment as a short-order cook of \$1,075.00 per month (\$250.00 per week x 4.3 weeks). His wife had self-employment earnings as a child care worker in July of \$796.42 per month. Since her income fluctuated, the petitioner was asked to bring in her income tax return for the prior year in order to access her actual monthly earnings. Her forms showed that she made \$2,260.00 during 1997, as a self-employed child care worker. That figure was used by the Department and divided by 12 to obtain a monthly figure of \$188.33. After the Department added their income together and gave each a \$90.00 employment expense deduction, a countable income of

\$1,083.22 resulted, which was less than the \$1,357.00 maximum for a two person household in the VHAP program. The petitioners were notified of their eligibility.

2. During a review of their income in February of 1999, the petitioner reported that his income had increased to \$1,204.00 (\$280.00 per week x 4.3 weeks) and that his wife was now working as a short-order cook at a mini mart at the rate of \$5.50 per hour. Her hours varied from twenty-one to thirty-five per week per month. The Department used the lower hourly figure (21 hours) and calculated the wife's income as \$496.65 per month. Each income figure was subjected to a \$90.00 employment expense deduction and the remainder was added together for a countable income of \$1,520.65. This time the amount was above the \$1,357.00 maximum for a two-person household and the petitioner and his wife were notified that their eligibility would cease.

3. The petitioner appealed that decision. He does not deny that the income now used by the Department is accurate. Instead, he says that he believed that he and his wife had more income when they applied in August of 1998 when they were found eligible and asked for an explanation.

4. The Department explained that while the petitioner's wife was working full-time in day care in August of 1998, and actually earned about \$800.00 that month, the Department's decision to average her income over the year (due to its self-employed and sporadic nature),

made it appear that she had less than \$200.00 for that month. She was, therefore, found eligible for benefits. Currently, however, her new income from employment in the form of wages is not averaged over the year but counted as actually received in each month. The result is that their joint income is now in excess of program maximums.

ORDER

The decision of the Department is affirmed.

REASONS

The VHAP regulations require that income be counted as follows:

W.A.M. 4001.81 Countable Income

Countable income is all earned and unearned income, as defined in this section, less all allowed deductions. Income in the month of application (or review) and future months is estimated based on income in the calendar month prior to the month of application (or review) unless changes have occurred or are expected to occur and this income does not accurately reflect ongoing income. If changes are expected to occur, an estimate of income based on current information should be used.

To determine countable monthly income, average weekly income is multiplied by 4.3 and average bi-weekly income is multiplied by 2.15.

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c. Earned Income

Earned income includes all wages, salary, commissions or profit from activities in which the individual is engaged as an employee or a self-employed person, including, but not limited to, active management of capital investments (e.g.

rental property).

Earned income is defined as income prior to any deductions for income taxes, FICA, insurance or any other deductions voluntary or involuntary except that, in determining earned income for self-employed individuals, business expenses are deducted first.

Earnings over a period of time, for which settlement is made at one given time, are also included (e.g., sale of farm crops, livestock, poultry). Monthly income is determined by dividing the settlement by the number of months in which it was earned.

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The following items are deducted from gross earned income in the sequence listed:

- Business expenses (self-employment only)
- Standard employment expense deduction
- Dependent care expenses

e. Standard Employment Expense Deduction

The standard employment expense deduction is the first \$90.00 earned per month after deduction of business expenses, where applicable.

The standard employment expense deduction is applied separately to the gross countable earned income of each individual in the VHAP group who is employed or self-employed.

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The petitioner appears to be correct that his family actually had more income in the month of July of 1998, which was used to calculate their eligibility under the August, 1998, application than at the time of the February, 1999, review. However, the accounting method used by the

Department in the August, 1998, calculation spread the wife's income over a number of months as if it were a one time settlement for earnings over a period of time as discussed at W.A.M. 4001.81, above. That favorable treatment allowed the family to be assisted after a \$180.00 employment expense deduction was made. In February, 1999, the wife was no longer self-employed and was receiving weekly paychecks which had to be counted. The Department counted only the lower number of hours she worked each week to determine the family's eligibility. Even using this lower figure and again giving the \$180.00 deduction, the family's income went over the \$1,357.00 maximum for a two person household. See W.A.M. 4001.84, P-2420.

As the calculations done in the petitioner's case were in accordance with the regulations and were figured in a manner most favorable to the petitioners, it must be concluded that the decision of the Department to terminate VHAP benefits at this time is correct.

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